

New Case Law Development in Exemptions & PTABOA Responsibilities and Processes

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Welcome and Overview of the Class

- Introduction to Exemptions
 - Indiana Constitution—Article 10, Section 1 (Legislature may exempt municipal, education, literary, scientific, religious, charitable use)
 - Statutes: IC 6-1.1-10-16 & Other specific statutes
 - Case Law—Tax Court, IBTR
 - Constitutionally Based Exemptions: Municipal, Charitable, Educational, Literary, Scientific, Religious—Basis in 1800's and Early Indiana Case Law
 - IC 6-1.1-10-16, et. seq.



Purpose of Exemptions and Additional Statutory Requirements

- Provide tax advantages for specific uses of property under Indiana law.
- Owned, occupied, and used for the exemption purpose. There must be unity of all three. (IC 6-1.1-10-16 (a))
- Nonprofit status or good causes aren't sufficient under Indiana law to qualify for an exemption—Each case stands on its own and exemptions are very fact specific.



Partial Use of Property–Exemptions

- Must be used at least 51% of the time for exempt purpose and then the exemption is that percentage, unless it is a religious use, and over 50% use provides for a 100% property tax exemption.
- Time records of exempt activity and non-exempt use of the property.
- See *Hamilton County Assessor v. Duke* (Indiana Tax Court 2017)



Exemptions are Different from Deductions

- "Deduction" means a situation where a taxpayer is permitted to subtract a fixed dollar amount from the assessed value of his property. (IC 6-1.1-1-5)
- "Exemption" means Haller Colvin a situation where a certain type of property, or the property of a certain kind of taxpayer, is not taxable under this article. (IC 6-1.1-1-6)
- Examples of deductions: Reduction from assessed value-such as over-65, veterans', and homestead deductions. (Specific statutes in Indiana Code)
- These are statutory deductions the legislature provides to certain categories of people and properties.

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What role do you have in relation to either exemption applications or the Assessor's Office

A - I am the Assessor or work in the Assessor's Office

B - I am a tax representative

C - I am a PTABOA member

D - I am an employee of a third-party vendor

E - Other

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Disclaimer

The statements and information that follow are of the views expressed by the presenter and the Allen County Assessor's Office only. Neither I nor the Allen County Assessor's Office are making any admission to the practice of law or attempting to act as an attorney in any capacity.



Topic Summary

- Data
- New Applications
- Transfers
- Refiling
- Auditing
- Presenting before PTABOA
- Hypothetical Situations
- Current Trends in Allen County



Property Tax Exemption Data—Allen County Specific

- Allen County Data
 - Total AV – 32,378,589,110
 - Exempt AV – 1,555,525,380
 - 4.8% Exempt (Form 136)
 - Primarily real property (86%)
- Approximately 2,200 applications for all of Allen County
 - About 125 new applications per year





Possible Sub-Categories of Exemptions

Examples of Potential Exempt Properties

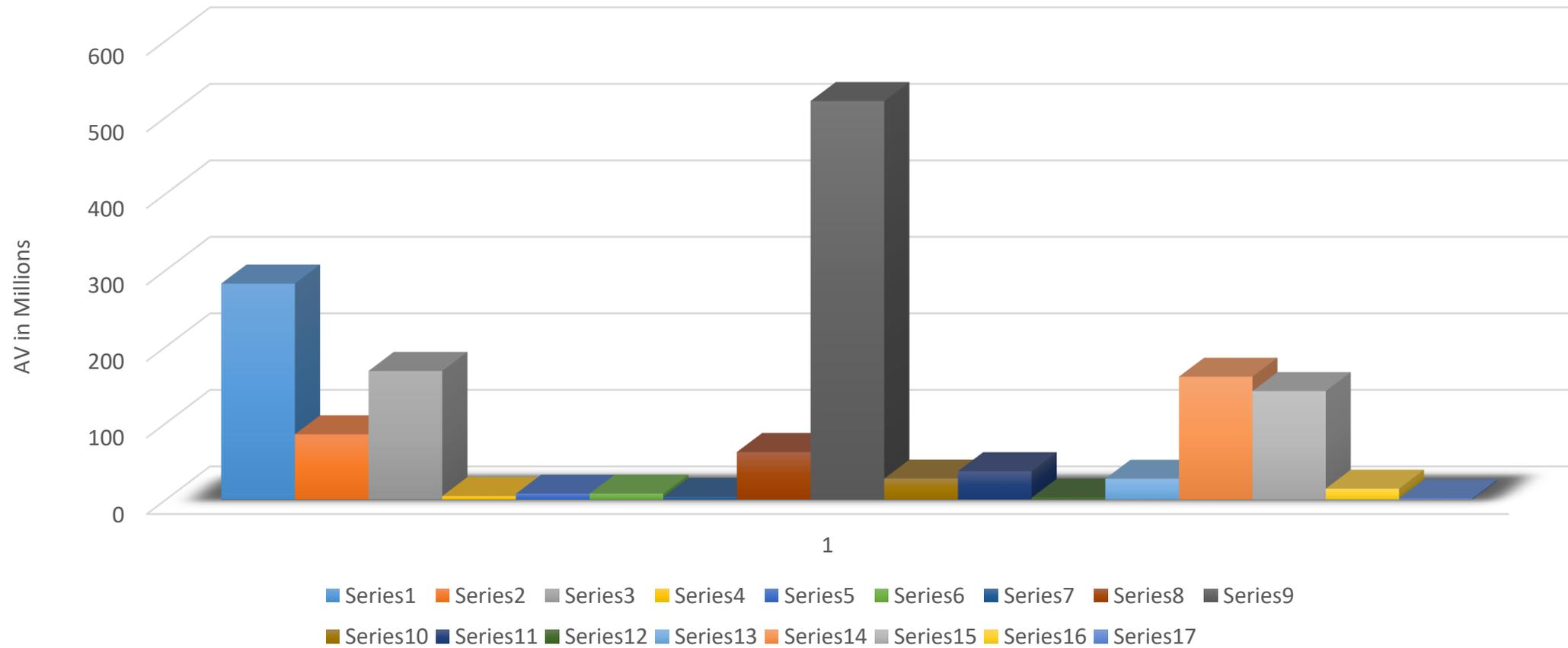
- Parsonage
- Union
- Association
- Vacant Land
- Land Preserve
- Medical
- Social Club
- Fraternity
- Lease
- Housing
- Childcare
- Cemetery

Examples of Exemption Applications

- Sports Club
- Swim Club
- Nursing Home
- Pocket Community
- Assisted Living
- Administratively Dissolved
- Under \$80k Cost (Personal Property)
- Thrift Store
- Foundation

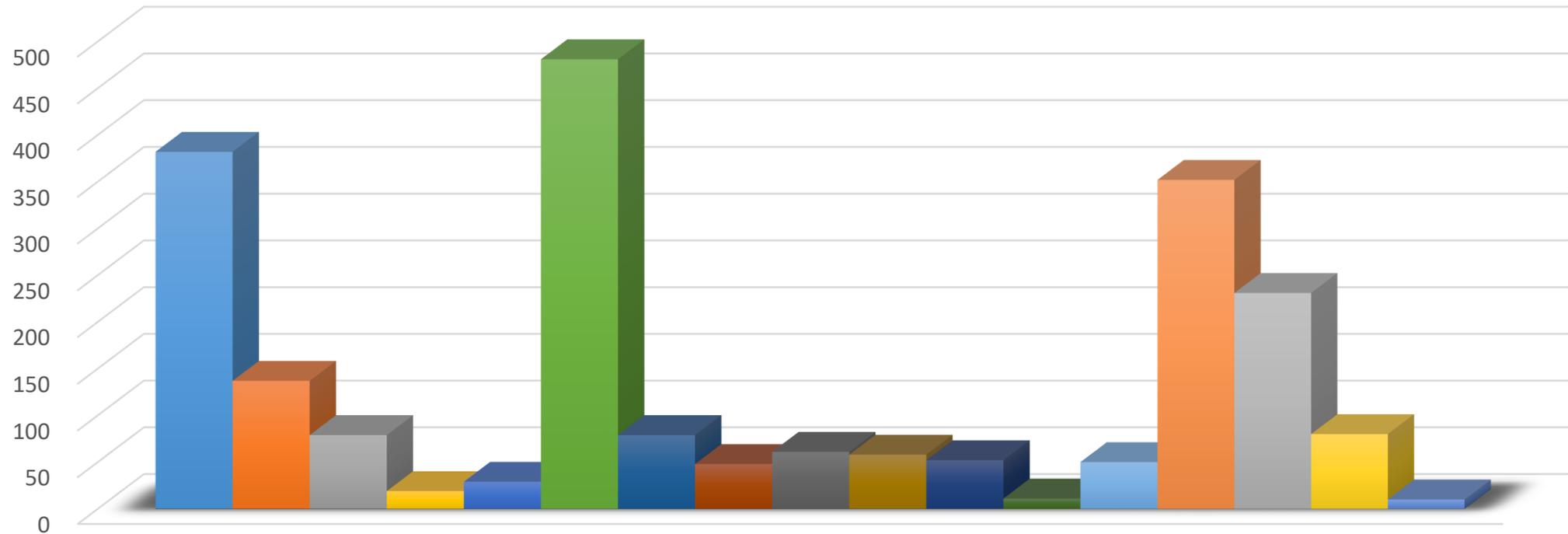


2021 Organization Type AV





2021 Exemption Record Count

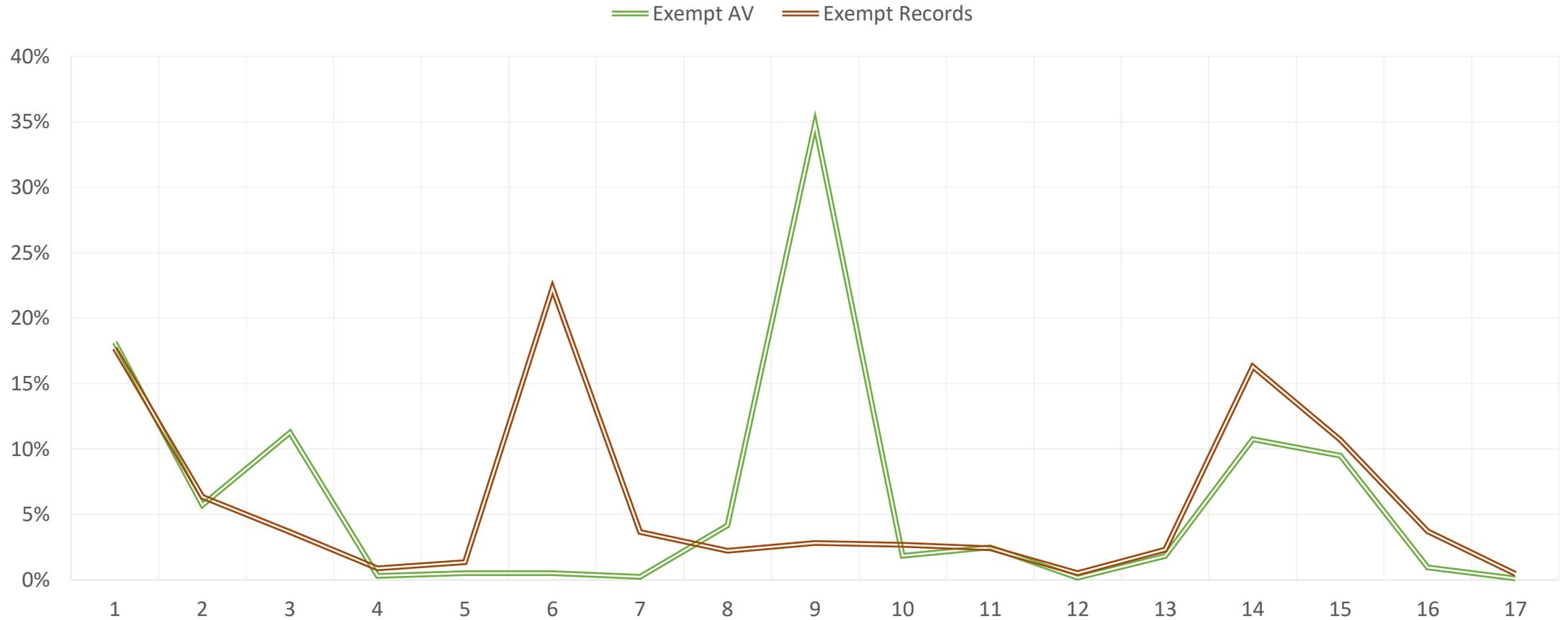


1

- Series1
- Series2
- Series3
- Series4
- Series5
- Series6
- Series7
- Series8
- Series9
- Series10
- Series11
- Series12
- Series13
- Series14
- Series15
- Series16
- Series17



2021 AV & Record Count



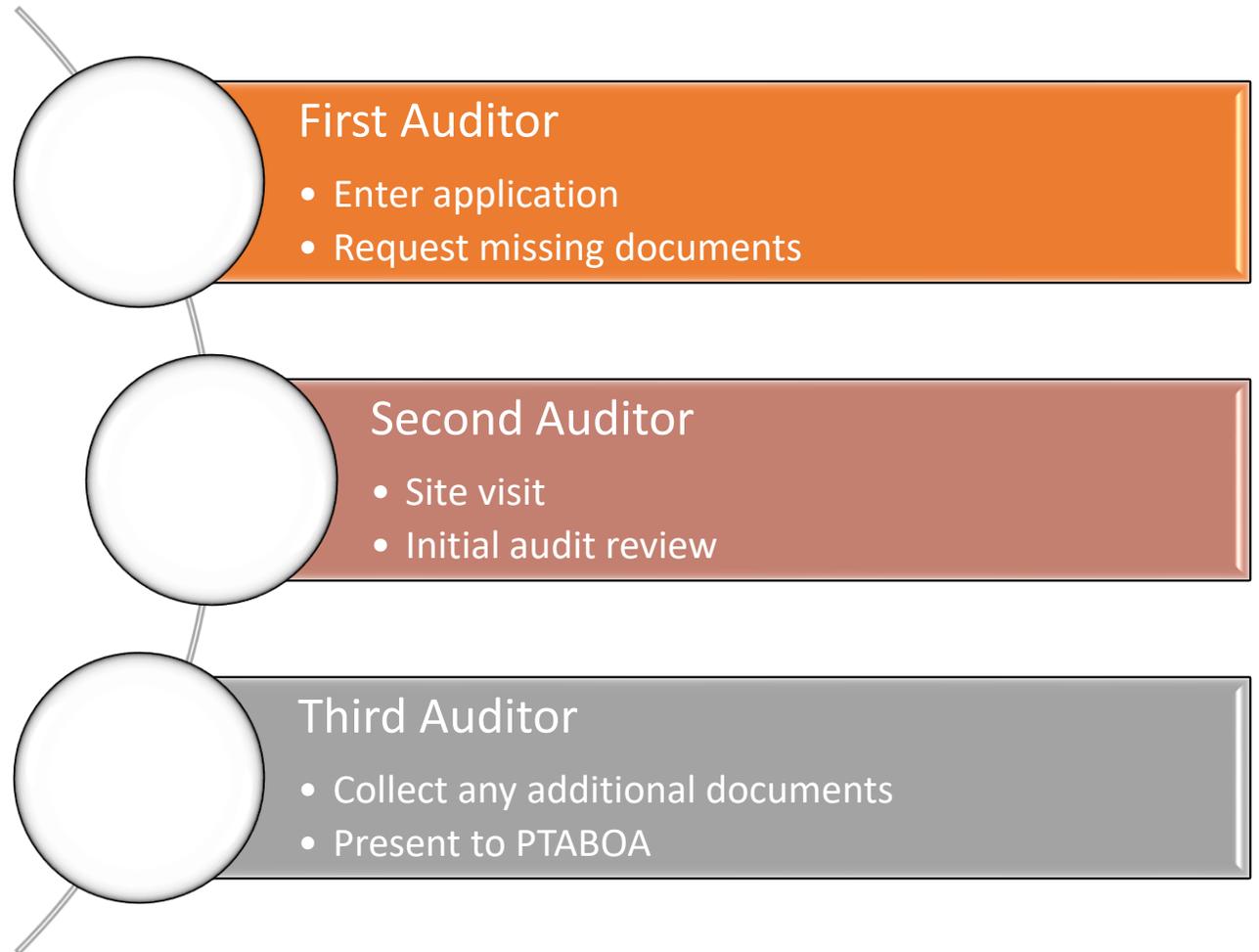
Collecting the Data

- Programs, Reports, and Points of Contact
 - Transfers, Permits, Personal Property
 - Tax sales, demand notices
 - Site visits
 - Other Departments
- Mapping
 - ArcGIS Pro
 - Heat signature map



New Application

- After going through the process, recommendation can be made
- Not all applications have a recommendation
- Some applicants withdraw the application



New Application

- All applications considered by PTABOA
 - Spreadsheet with information
 - Indiana Code applied under
 - Assessed value
 - Recommendations
 - Request to have applicant appear
- Annual reporting to PTABOA
 - Current trends and information



Transfers

- Notified or Discovered
 - I.C. § 6-1.1-11-4(e)
 - If, after an assessment date, an exempt property is transferred or its use is changed resulting in its ineligibility for an exemption under I.C. § 6-1.1-10, the county assessor shall terminate the exemption for the next assessment date.
- Form 136-CO/U
 - Required to be filed
 - Refile of form 136



Transfers

- Notified or Discovered
 - I.C. § 6-1.1-11-4(f)
 - If the county assessor discovers that title to or use of property granted an exemption under I.C. § 6-1.1-10 has changed...the county auditor will suspend the exemption for the property until the persons provide the county assessor with an affidavit
 - Affidavit
 - Identifies the new owners or use of the property and indicates whether the property continues to meet the requirements for an exemption under I.C. § 6-1.1-10-16
 - Upon receipt of the affidavit, the county assessor shall reinstate the exemption



Transfers

- Retroactive exemption
 - I.C. § 6-1.1-11-3(h)
 - Notwithstanding subsection (a), a person seeking an exemption may file an exemption application up to three (3) years following the deadline set forth in subsection (a) if:
 - (1) the property on which the person seeking an exemption was exempt from taxation for the tax year immediately before the deadline set forth in subsection (a); and
 - (2) the person seeking an exemption would have been eligible for the exemption on the deadline set forth in subsection (a)
 - I.C. § 6-1.1-11-3(g)
 - The claim or application may be filed on or with a personal property tax return not more than thirty (30) days after the filing date for the personal property tax return, regardless of whether an extension of the filing date has been granted



Transfers

- Late fees
 - I.C. § 6-1.1-11-3(i)
 - Notwithstanding subsection (a), a person seeking an exemption under I.C. § 6-1.1-10-16 may file an exemption application up to thirty (30) days following the deadline set forth in subsection (a) if the person pays a late filing fee equal to the lesser of:
 - (1) twenty-five dollars (\$25) for each day after the deadline set forth in subsection (a); or
 - (2) two hundred fifty dollars (\$250)
 - Seeking an exemption under any other Indiana Code



Refiling

- Not-for-profit corporation
 - I.C. § 6-1.1-11-3.5
 - (a) A not-for-profit corporation that seeks an exemption provided by I.C. § 6-1.1-10 for 2000 or for a year that follows 2000 by a multiple of two (2) years must file an application for the exemption in that year.
 - (b) A not-for-profit corporation that receives an exemption provided under I.C. § 6-1.1-10 for a particular year that remains eligible for the exemption for the following year is only required to file a statement to apply



Refiling

- Exemption application not required in some instances
 - I.C. § 6-1.1-11-4
 - (d) The exemption application referred to in section 3 or 3.5 of this chapter is not required if:
 - I.C. § 6-1.1-10-16, 21, or 24
 - Was filed properly at least once
 - Continues to meet the requirements



Auditing

- I.C. § 6-1.1-11-4(g)
 - This section shall not be construed to limit the authority of the county property tax assessment board of appeals to review the ongoing eligibility of a property for an exemption. A county property tax assessment board of appeals shall disapprove an exemption application in any year following the initial approval of the application if the property is not eligible for an exemption.



Auditing

- Currently, all of Allen County form 136 exemption applications are being reviewed.
 - Issues discovered thus far
 - Vacant land or buildings
 - Multiple buildings or uses
 - Including multiple entities using same property
 - Leases



Auditing – Research

- Reviewing data
 - Where are the issues in comparison to what Indiana Code and case law says
- Reviewing recent decisions
 - Case law spreadsheet
 - Referenced statutes
 - Other case law referenced
 - Notes
- Reviewing Indiana Code
 - I.C. § 6-1.1-10-16
 - Enumeration (I.C. § 6-1.1-10-38)
- Defining terms as they are defined in Indiana Code.



Auditing – Research

- The first sources of information and/or comparison – Case Law
 - Indiana Board of Tax Review (IBTR)
 - <https://www.in.gov/ibtr/decisions/>
 - Indiana Tax Court
 - <https://public.courts.in.gov/decisions?c=9550>
 - Indiana Supreme Court
 - <https://public.courts.in.gov/decisions?c=9510>



Auditing – Research

- Other sources of information and/or comparison –
Local Level
 - Planning Department – Zoning, Staff Reports
 - Building Department – Permits
 - County Courts
 - <https://public.courts.in.gov/mycase/#/vw/Search>
 - Neighborhood Code Enforcement – Violations
 - County Surveyor
 - County Board of Health
 - Township Trustees
 - Veteran Services
 - Police Department – Activity Reports



Auditing – Research

- Other sources of information and/or comparison – State Level
 - Indiana Secretary of State
 - Articles of Incorporation, Assumed Business Name, Articles of Dissolution
 - <https://bsd.sos.in.gov/publicbusinesssearch>
 - Indiana General Assembly
 - Indiana Code, Indiana Administrative Code
 - <http://iga.in.gov/>
 - Indiana Board of Health
 - Indiana Board of Education
 - School licensing and information
 - Indiana Family and Social Services Administration (FSSA)
 - Daycare licensing and information
 - <https://www.in.gov/fssa/>



Auditing – Research

- Other sources of information and/or comparison – Federal & Others
 - Form 990 – Return of Organization Exempt From Income Tax
 - <https://apps.irs.gov/app/eos/>
 - <https://www.open990.org/org/>
 - Indiana license search
 - <https://mylicense.in.gov/everification/Search.aspx>
 - Medical reports
 - IN hospital community benefit reports
 - <https://www.in.gov/health/cshcr/reports-on-health-care-facilities/hospital-community-benefit-reports/>
 - Health Professional Shortage Area (HRSA)
 - <https://data.hrsa.gov/tools/shortage-area/hpsa-find>



Auditing – Research

- Other sources of information and/or comparison – Others
 - Other Indiana State offices
 - https://www.in.gov/core/find_agency.html
 - What have other private organizations have said about others (grain of salt)
 - <https://www.guidestar.org/search>
 - <https://www.charitywatch.org/>



Other Clues & Evidence

- Financial information
 - Income & Expense Statements
 - Independently audited
 - How organization is structured
 - Other related organizations
 - Sources of income
 - Rent, Lease
 - Expenditures
 - Operating/Management Agreements
 - Capital expenditures



Other Clues & Evidence

- Form 136
 - Number of individuals that benefit from the exempt activity
 - Frequency of exempt activities
 - What credentials necessary to participate in the exempt activity
- Frequently, Form 136 does NOT coincide with provided documentation



Other Clues & Evidence

- Online information
 - Helpful, but certainly may not be reliable
 - Real estate listings
 - Google (Google Reviews)
 - News
- Organization website
 - What is presented to the public



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Does the Assessor's Office in your county present exemption applications before PTABOA?

Yes

No

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Exemption Process Pre-PTABOA

- Share relevant statutes with the taxpayer.
- Share relevant case law with the taxpayer.
- Nobody wins by “hiding the ball.”
- An informed taxpayer makes for a more productive PTABOA hearing.



Exemption Process Pre-PTABOA

- Send a written request for pertinent information.
- Pertinent information depends upon type of exemption requested.
- Types of material helpful for most requested exemptions:
 - Corporate documents;
 - Financials; and
 - Agreements (such as a lease) pertaining to use of the subject property.



The Structure and Function of the PTABOA

- Indiana Code 6-1.1-1-4.5 and 6-1.1-28-1.
- County PTABOA and Multi-County PTABOAs.
- 3 or 5 members appointed by the County Commissioners.



Assessor as Nonvoting Secretary of the PTABOA—Key and Important Role

- Assessor MUST implement the PTABOA Decision.
- Best Practices: (See Handout)
- Ensure Open Door Law Requirements are met.
- Circulate Agenda and Prior Minutes/Board Packet at least a week in advance of the meeting.
- Ensure recording of the meeting with a reliable recording device.



Assessor as PTABOA Secretary

- Clearly restate motions to ensure understanding by all members. If there is confusion, take time to sort it out during the meeting.
- Take clear notes during the meeting as an additional backup to a recording. If a recording device fails, take time to locate and use another device (even an iPhone).
- Immediately save and create a back-up on another source after the meeting.



Assessor as PTABOA Secretary

- Write the draft minutes within a week of the meeting. Circulate the draft minutes to board members for review and comment.
- Present the draft minutes at the next meeting so that board members may make any changes. Adopt the minutes.
- Ensure that agendas, minutes, and other information is posted on the PTABOA or county website.



Potential Procedural Problems & Issues at the PTABOA

- The assessor doesn't record the hearing.
- The assessor doesn't capture and record minutes.
- PTABOA members disagree or forget what happened at the last meeting.



Potential Issues and Problems at the PTABOA

- The assessor refuses or misapplies the PTABOA decision.
- The assessor does not provide an agenda, circulate substantive information in time for review before a meeting.
- Other miscommunication.

Presenting before PTABOA

- Handout with Exhibits
 - Form 136
 - Property record card
 - Form 103/104
 - Articles of Incorporation
 - Bylaws
 - Predominant use worksheet
 - Financial documents
 - Leases
 - Communications
 - Site visit (photos)



Presenting before PTABOA

- Handout
 - Identify property & property features
 - Include appropriate Indiana Code & case law
- Confidential Information
 - Mark as confidential & printed on green paper
 - Redact unnecessary confidential information



Presenting before PTABOA

- Applicant always has burden to prove exemption
 - Allen County Assessor's Office goes first only to give facts of the application and property
 - Applicant presents then Assessor's Office gives rebuttal regarding any Indiana Codes, case law, or other information in response to testimony



Exemption Process

– Training Your PTABOA

- Annual training;
- If not annual, train whenever you have a new member;
- Training should include statutes, case law and processes;
- Cover the “big ones” – I.C. § 6-1.1-10-16, for example.

Exemption Process – Training Your PTABOA

- Assist PTABOA with understanding they are the “judge;”
- Impartiality;
- Decorum;
- Statistics; and
- Authority.

Exemption Process During PTABOA



- St. Mary's Bldg. Corp. v. Redman, 135 N.E.3d 681, 685 (Ind. Tax Ct. 2019) and Hamilton County Property Tax Assessment Bd. Of Appeals v. Oaken Bucket Partners, LLC, 938 N.E.2d 654, 657 (Ind. 2010)
 - Know the players
 - Who owns the property?
 - Who uses/manages the property?
 - Who occupies the property?
- Use as of assessment date (and year prior)

Exemption Process During PTABOA, Charitable



- St. Mary's Bldg. Corp. v. Redman, 135 N.E.3d 681, 685 (Ind. Tax Ct. 2019)
- Questions to ask and documents to request
 - Relief of Burden
 - Commercial Profit Motive
- Non-profit does NOT mean charitable
- Free does NOT necessarily mean charitable

Exemption Process During PTABOA, Medical Facilities



- I.C. § 6-1.1-10-16(a); I.C. § 6-1.1-10-16(h); I.C. § 6-1.1-10-4; I.C. § 6-1.1-10-47; and I.C. § 6-1.1-10-18.5
- Questions to ask and documents to request, use the following cases for guidance:
 - St. Mary's Bldg. Corp. v. Redman, 135 N.E.3d 681, 685 (Ind. Tax Ct. 2019)
 - Putnam Post-Acute Holdings, LLC v. Howard County Assessor, Pet. No. 34-012-18-2-8-00656-18 et al. (May 28, 2021)
 - Tipton County Health Care Foundation, Inc. v. Tipton County Assessor, 961 N.E.2d 1048 (Ind. Tax Ct. 2012).
- Medical care is NOT automatically charitable

Exemption Process During PTABOA, Educational



- I.C. § 6-1.1-10-16(a); I.C. § 6-1.1-10-16(c); I.C. § 6-1.1-10-46; and I.C. § 6-1.1-10-36.3
- Questions to ask and documents to request, use the following cases for guidance:
 - State Bd. Of Tax Com. V. Ft. Wayne Sport Club, Inc., 258 N.E.2d 874; 147 Ind. App. 129, 140-141 (Ind. Ct. App. 1970).
 - Elkhart Land Development, LLC and GK Bristol Childcare Corp. d/b/a Growing Kids Learning Center, Pet. No. 20-027-19-2-8-00739-19 et al., (Sept. 23, 2021).

Exemption Process

During PTABOA, Educational



- Sports club facilities are NOT automatically exempt
- Daycares are NOT automatically exempt
- Cases to watch: union buildings with apprenticeship training programs
 - Legal Question: are those buildings “Schools?”

Exemption Process During PTABOA, Religious



- I.C. § 6-1.1-10-16(a); I.C. § 6-1.1-10-21
- Questions to ask and documents to request, use the following cases for guidance:
 - St. Mary's v. Redman (IBTR, not Tax Court, opinion)
 - Alte Salems Kirche, Inc. v. State Bd. of Tax Comm'rs, 733 N.E.2d 40 (Ind. Tax Ct. 2000).
- Property owned by churches NOT automatically exempt.
- Transfer of church property – automatic exemption?

Exemption Process Post-PTABOA

- Discovery;
- Depositions; and
- Dispositive Motions.



Hypothetical Situations

- A not-for-profit corporation has filed for charitable exemption. Upon review of the Articles of Incorporation, you find that the corporation has since been dissolved. As it stands, the not-for-profit corporation owns the real estate. Can a dissolved corporation receive an exemption?



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What would you do if a dissolved organization applied for an exemption on real property?

A - Recommend exemption to the PTABOA.

B - Recommend denial of exemption to PTABOA.

C - Contact organization to fix the issue.

D - Bring everything to the PTABOA with no recommendation.

None of the above

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Hypothetical Situations

- A not-for-profit cemetery corporation a separate and distinct entity from the religious organization that uses the cemetery, has an exemption on a parcel. A funeral home is built and operated on the same parcel of land.
 - IC 6-1.1-10-27(a)(1)
 - The real property, including mausoleums and other structures in which human remains are buries or interred but not including crematories, funeral homes, offices, or maintenance structures.



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How would you handle an exemption request for cemetery parcel that includes a funeral home?

A - Funeral home is part of cemetery thus exempt.

B - According to IC 6-1.1-10-27, a funeral home cannot be part of the parcel thus fully taxable.

C - Even though it is part of the parcel, the funeral can be taxed while the remaining cemetery is exempt.

D - Request the applicant to split the parcel to exempt the cemetery and tax the funeral home.

None of the above

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Hypothetical Situations

- A not-for-profit thrift store that uses the proceeds for the betterment of the mentally disabled has downsized and is currently storing equipment at an offsite location. The organization files for the business personal property on a 103 form. They have since filed a subsequent form 136 to claim exemption under IC 6-1.1-10-16.



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Would the business personal property be considered owned, occupied, and used for an exempt purpose?

Yes

No

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Developing Case Law--Exemptions

- Medical facilities and any related entities
 - Hospital and supportive buildings
 - Nursing homes and assisted living
 - Pocket communities (independent living)
 - Physician offices
- Low-income housing (A variety of federal programs administered by the Indiana Housing Authority)
- Government ownership
 - Airport property
 - County lines



**What type of unique properties or challenging exemptions
have you encountered in your office?**

Questions?

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